

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CAROL NELSON and STEVE NELSON,
personally and on behalf of LINDSEY NELSON,
a minor child,

Plaintiffs,

vs.

Civ. No. 13-569 KG/WPL

BERNALILLO COUNTY; ALBUQUERQUE
BERNALILLO COUNTY WATER UTILITY AUTHORITY;
TLC PLUMBING, INC.; ADVANTAGE BARRICADE AND
ROADMARKS, LLC; and ANTONIO VARGAS, in his
individual capacity,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon the County Defendants' Motion for Summary Judgment on Counts I and II of Plaintiff's [sic] Complaint and for Qualified Immunity and Memorandum in Support Thereof (Motion for Summary Judgment), filed on August 23, 2013. (Doc. 17). Plaintiffs filed a response on August 31, 2013, in which Plaintiffs requested, pursuant to Fed. R. Civ. P. 56(d), that the Court either deny or stay the Motion for Summary Judgment to allow them to conduct discovery which would enable them to respond to the Motion for Summary Judgment. (Doc. 24). Defendants Bernalillo County and Antonio Vargas (County Defendants) filed a reply on September 1, 2013. (Doc. 27).

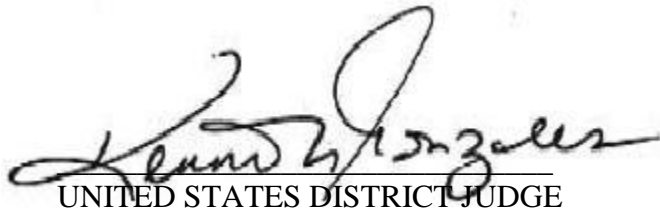
The Magistrate Judge subsequently stayed discovery based on the County Defendants' assertion of qualified immunity in the Motion for Summary Judgment. (Doc. 30). The Magistrate Judge, however, noted that "[a]ll discovery is stayed pending Judge Gonzales's ruling

on Plaintiffs' Rule 56(d) response to the County Defendants' motion for summary judgment and for qualified immunity." *Id.* at 3.

Since the Magistrate Judge entered his order staying discovery, the Court has allowed Plaintiffs to file a second amended complaint to add factual allegations, which could affect the merits of the Motion for Summary Judgment. (Doc. 55). Hence, the Court will deny both the Motion for Summary Judgment and Plaintiffs' request for Rule 56(d) discovery as moot. Since the Motion for Summary Judgment is now moot, the Court lifts the stay on discovery at this time. This ruling, however, does not foreclose a future stay of discovery, if warranted.

IT IS ORDERED that

1. County Defendants' Motion for Summary Judgment on Counts I and II of Plaintiff's [sic] Complaint and for Qualified Immunity and Memorandum in Support Thereof (Doc. 17) is denied as moot;
2. Plaintiffs' Rule 56(d) request for discovery is denied as moot;
3. the stay of discovery is lifted at this time; and
4. the Court's ruling lifting the stay of discovery does not foreclose a future stay of discovery, if warranted.



UNITED STATES DISTRICT JUDGE